

NONPROFIT AND UNINCORPORATED ORGANIZATIONS COMMITTEE

Legislative Update as of February 19, 2009

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AB 285 (Introduced 2/13/09) -- Text below is taken from Joel Corwin's Fact Sheet

Corporations Code Section 20 defines "electronic transmission by the corporation." It also requires that any such electronic transmission by a corporation to an individual shareholder or member is not authorized unless, in addition to satisfying the requirements of the section, it satisfies the requirements applicable to consumer consent to electronic records as set forth in the federal Electronic Signatures in Global and National Commerce Act ("E-Sign Act").

The provisions of Section 20 requiring satisfaction of the requirements of the E-Sign Act impact many of the uses of electronic transmissions by California corporations. For example, for mutual benefit corporations, this would include Corporations Code Section 7211, which allows board members to participate in a meeting through the use of electronic transmission by and to the corporation; Section 7511, which authorizes notices of member meetings by electronic transmission by the corporation; and Section 7513, which allows ballots and any related material to be sent by electronic transmission by the corporation. The provisions also similarly impact public benefit and religious corporations to the extent that they have members, as well as for-profit corporations' communications with their shareholders.

The problem, which greatly restricts the use of these sections (which otherwise would present opportunities for efficiencies and improved communication for California corporations), is the necessity of consulting the E-Sign Act, interpreting it and ensuring that the corporation seeking to electronically communicate with its members or shareholders complies with the thicket of requirements of the E-Sign Act. The E-Sign Act actually only applies to "consumers," and that term is defined essentially as meaning persons who purchase or receive goods or services primarily for personal or household use.

AB 285 provides a workable standard in lieu of the E-Sign Act, while using it as a general guide. The constraints of the federal E-Sign Act are not quite appropriate for electronic transmissions by corporations under the California Corporations Code. In fact, even if they were, it would be better if the actual requirements were in the Corporations Code rather than requiring people to go and find and then apply the federal law. In addition, there apparently may be some concerns that the requirements of Section 20 run afoul of the SEC's "notice and access" regulation dealing with proxy materials.

This bill was drafted by our legislative subcommittee, in particular Joel Corwin, Brad Clark, and Nancy McGlamery.

Status: May be heard in committee on March 16.

Please see <http://www.calbar.ca.gov/calbar/legislation/State%20Bar%20Bill%20Tracking-Sections.html> for more information on this bill and other pending legislation.